

NOTICE OF PROPOSED RULE

POSTING DATE: August 9, 2019

**By: Jacqueline Yaft
Executive Director, Aviation**

The Executive Director of the Aviation Department of the City of Austin, Texas proposes to repeal Rule No. R161-15.10 and adopt the attached rule for an incentive program for airlines that provided scheduled air service to Austin-Bergstrom International Airport.

EFFECTIVE DATE OF PROPOSED RULE

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before, September 10, 2019 (the 32nd day after the date of this notice) or not after October 18, 2019 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before after October 18, 2019, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

REQUEST FOR COMMENTS ON PROPOSED RULES

Comments on the proposed rule are requested from the public. Comments should be submitted to Susana Carbajal, the Aviation Department, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719. You may contact her by phone (512-530-6364) or email (Susana.Carbajal@abia.org). To be considered, comments must be submitted before September 9, 2019, the 31st day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

TEXT OF PROPOSED RULE

A copy of the complete text of the proposed rule is available for public inspection and copying at the following locations. Copies may be purchased at the following locations at a cost of ten cents per page:

Aviation Department, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719.

Office of the City Clerk, City Hall, located at 301 W. 2nd Street, Room 1120, Austin, Texas 78701.

BRIEF EXPLANATION OF PROPOSED RULE

The proposed rule will repeal and replace Rule No. R161-15.10 and adopt an incentive program for airlines that provide scheduled air service to Austin-Bergstrom International Airport.

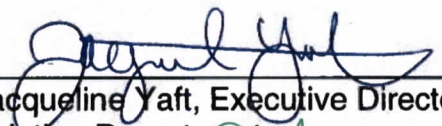
AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of the City Code is provided in Chapter 1-2 of the City Code.

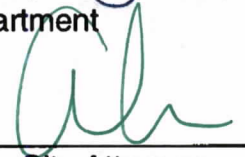
CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Proposed Rule R 161-19.17, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of administrative authority.

REVIEW AND APPROVED



Jacqueline Yaft, Executive Director
Aviation Department



Anne Morgan, City Attorney
Law Department

Proposed Rule No.: R161-19.17

Repeal and replace Rule No.: R161-15.10 with the following:

AUSTIN-BERGSTROM INTERNATIONAL AIRPORT DOMESTIC AND INTERNATIONAL AIR SERVICE INCENTIVE PROGRAM

In order to increase competition and to enhance domestic and international air service from Austin-Bergstrom International Airport, the City of Austin Aviation Department offers this Domestic and International Air Service Incentive Program ("Program"). Under this Program, any Qualifying Carrier providing new qualifying scheduled service to domestic or international destinations may be offered temporary waivers in specified Airport fees and charges and may be offered marketing assistance, subject to the availability and limits of the Airport's approved budget.

1. Definitions.

- A. Airport means the Austin-Bergstrom International Airport in Austin, Travis County, Texas.
- B. Application means the written request to participate in the Program submitted by a Qualifying Carrier that complies with the requirements of Section 4.C of this Program.
- C. Department means the City of Austin Department of Aviation.
- D. Destination Airport means an airport with an IATA code. More than one airport may be within the standard census definition of metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA).
- E. Facility Fees means amounts payable by a Qualifying Carrier to the City of Austin Aviation Department for the use and occupancy of space or facilities in the Barbara Jordan Terminal, including to the extent applicable, ticket counter and associated queuing space, terminal hold rooms, operations office space, baggage storage space, common space rent (80/20), RON (Remain Over Night) aircraft parking, terminal equipment, US Customs Service, and Shared Use Fees. Facility Fees do not include charges for Passenger Facility Charges (PFCs) or other non-Department fees or costs.
- F. Good Standing means a Qualifying Carrier that is in compliance with the Program and its Agreement and does not owe any rents, fees, and other charges payable to the Department or the City of Austin.
- G. Incumbent Air Carrier means an air carrier that is currently serving AUS with scheduled service.
- H. Landing Fees means amounts payable to the Department by a Qualifying Carrier for the privilege of landing an aircraft at the Airport
- I. New Entrant means a Qualifying Carrier that has not, in the twelve (12) months prior to the application for incentive per section 4.C served the Airport either directly or indirectly through one of its subsidiaries, or an airline that operates at

the Airport solely as an "Affiliate" (as that term is defined in the Airport Use and Lease Agreement) of an Incumbent Air Carrier that is not eligible to participate in the New Entrant Incentive Program.

- J. New Route means a nonstop round trip flight between Austin, Texas (AUS) and a destination airport that, at the time of service announcement, does not have nonstop scheduled service to Austin nor has nonstop service been publicly announced or schedules filed by another carrier. A New Route may also be defined as a nonstop round-trip flight between AUS and a destination airport that currently only maintains scheduled service on a seasonal basis.
- K. Participating Airline means a Qualifying Carrier that is participating in the Program.
- L. Program means this Domestic and International Air Service Incentive Program.
- M. Qualifying Carrier means a certificated air carrier that has executed an Austin-Bergstrom International Airport Use and Lease Agreement or an Austin-Bergstrom International Airport Airline Operating Agreement with the City of Austin Department of Aviation ("Agreement"). A Qualifying Carrier must have a Letter of Credit or Security Deposit on file and be in Good Standing with the Department. A Qualifying Carrier may be either a New Entrant or an Incumbent Air Carrier operating at the Airport.

2. Program Qualifications and Incentives.

A. New Entrant Incentive Program Qualifications. A New Entrant that:

- (1) Initiates and maintains round trip scheduled air service to Destination Airport(s) from the Airport with not less than eight (8) departures per month on average for twelve (12) consecutive months to at least one Destination Airport from the date of commencement of operations at the Airport ("Minimum Departure Requirement"); and
- (2) Complies with the terms, conditions, and covenants of this Program and its Agreement shall be offered:
 - a. Facilities Incentives.
 - i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.A(1) shall be offered a waiver of all facilities fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of twelve (12) months from the effective date of such Agreement.
 - ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space and/or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.

- b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.A (1) shall be offered a waiver of Landing Fees for a period of twelve (12) months from the date it first initiates service in AUS.
 - c. Marketing Introduction Program as described in Section 3.
 - (3) If New Entrant does not meet the Minimum Departure Requirement it may, at the discretion of the Department, be required to reimburse all or a proportion of the incentive program expense equal to the number of the months in the first twelve (12) month period New Entrant falls below the Minimum Departure Requirement.
- B. Continental U.S. New Route Program Qualifications. A Participating Airline that:
- (1) Initiates service from AUS to any destination in the Continental U.S.; and
 - (2) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.B shall be offered a waiver of Landing Fees attributable to all flights from the Continental U.S. New Route(s) for a period of twelve (12) months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.B., may be offered a maximum of \$25,000 in advertising and marketing costs for year one (1), for a total amount not-to-exceed \$50,000 for two (2) or more routes announced simultaneously. The marketing incentive may be reduced at the discretion of the Executive Director for any carrier that operates the Continental U.S. New Route for less twelve (12) consecutive months from service inception.
- C. Hawaii New Route Program Qualifications. A Participating Airline that:
- (1) Initiates service from AUS to any destination in Hawaii; and
 - (2) Operates the Hawaii New Route a minimum of twelve (12) times a month for a period of not less than one (1) year from service inception; and
 - (3) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.C shall be offered a waiver of Landing Fees attributable to all flights from the Hawaii New Route(s) for a period of twenty-four (24) months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.C., may be offered a maximum of \$100,000 in

advertising and marketing costs for year one (1) and \$50,000 for year two (2).

D. North/Central/South American (Non-U.S.) New Route Program Qualifications. A Participating Airline that:

- (1) Initiates service from AUS to a North, Central or South American Destination not located in the Continental U.S. or Hawaii; and
- (2) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.D shall be offered a waiver of Landing Fees attributable to all flights from the North, Central and South American New Route(s) for a period of twelve (12) months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.D. may be offered a maximum of \$100,000 in advertising and marketing costs for year one (1) and \$50,000 for year two (2). The marketing incentive may be reduced at the discretion of the Executive Director for any carrier that operates the North, Central or South American New Route for less twelve (12) consecutive months from service inception and/or less than twelve (12) flights per month.

E. International Priority Routes (Amsterdam, Beijing, Dublin, Paris, Seoul, Shanghai and Tokyo only) New Route Incentive Program Qualifications. A Participating Airline that:

- (1) Initiates service to Amsterdam, Beijing, Dublin, Paris, Seoul, Shanghai, or Tokyo only from AUS; and
- (2) Complies with the terms, conditions and covenants of this Program and its Agreement, shall be provided:
 - a. Facilities Incentives.
 - i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E shall be offered a waiver of all Facilities Fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of twenty-four (24) months from the effective start date of service.
 - ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.
 - b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E. shall be offered a waiver of Landing Fees

attributable to all flights from the applicable International Priority New Route(s) for a period of twenty-four (24) months from the date it first initiates service in AUS.

- c. Marketing Introduction Program as described in Section 3.
- d. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E. may be offered a maximum of \$300,000 in advertising and marketing costs for year one (1) and a maximum of \$200,000 in advertising and marketing costs for year two (2) for a total amount not to exceed \$500,000 in advertising and marketing costs for the twenty-four (24) months.

F. Transoceanic Seasonal New Route Incentive Program Qualifications. A Participating Airline that:

- (1) Initiates service to a destination not located in North or South America; and
- (2) Continuously operates the Transoceanic New Route for a minimum of two (2) times per week for a period of not less than eight (8) weeks from effective start date of service; and
- (3) Complies with the terms, conditions and covenants of this Program and its Agreement, shall be provided:

a. Facilities Incentives.

- i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F shall be offered a waiver of all Facilities Fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of twelve (12) months from the effective start date of service.
 - ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.
- b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F. shall be offered a waiver of Landing Fees attributable to all flights from the Transoceanic Seasonal New Route(s) for a period of twelve (12) months from the date it first initiates service in AUS.
- c. Marketing Introduction Program as described in Section 3.
 - d. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F. may be offered a minimum of \$50,000 and maximum of \$150,000 in advertising and marketing costs for year one (1) and a maximum of \$100,000 for year two (2).

3. Marketing Introduction Program.

The Department will provide a variety of public relations, media strategies, advertising, and trade opportunities to promote the Airport's new air service for business and leisure passengers. The Airport's marketing incentive program is tailored to the

characteristics of each specific route and the carrier providing the new service and is primarily directed at maximizing exposure to the local media and travel and tourism trades. The Department uses established strong partnerships with local travel, tourism, and business entities to organize inaugural events and generate publicity in key business publications. The Department arranges introductions to key decision-makers at local businesses and organizations, arranges familiarization trips for tourism trade representatives and facilitates access to targeted databases of partner organizations. The Department utilizes its in-house advertising program to supplement the airline's key advertising message with advertising in the Airport terminal and on the Airport web site. This provides daily exposure to thousands of travelers, meeters, greeters, and the general public. For airlines willing to provide tickets for promotions, Department staff will assist the airline in bartering the tickets for advertising and promotional media time.

4. General Provisions.

- A. Incentives Non-Transferable. Incentives under this Program may not be transferred or assigned to another air carrier, except a carrier that succeeds to substantially acquire all of the Qualifying Carrier's assets by merger or acquisition.
- B. Effective and Expiration Date. This Program is effective on the date formally adopted by the Department ("Effective Date") and shall remain open for enrollment for a period of five (5) years. To qualify for incentives under the New Entrant Incentive Program, the New Entrant must apply for incentives from the Airport within five (5) years from the Effective Date of this Program. To qualify for incentives under the New Route Incentive Program(s), a Qualifying Carrier must commence operations on the New Route within five (5) years from the Effective Date of this Program. A Qualifying Carrier must be in Good Standing at the time that it qualifies for the New Entrant Incentive Program and/or the New Route Incentive Program(s) and remain in good standing in order for the incentives to take and remain in effect. In the event the Qualifying Carrier reaches Good Standing within ten (10) days after receipt of written notice from the Department specifying failure and maintains Good Standing for a minimum of six (6) consecutive months following such notice, the incentives under the Program may be reinstated by the Department at its sole discretion. The Participating Airline must execute a rider or addendum to its Agreement incorporating the provisions of the Program.
- C. Application. An air carrier must submit a written request to participate in this Program with the following:
 - (1) A request to participate in the New Route Incentive Program(s) shall identify the New Routes and schedule the Participating Airline plans to operate, including the proposed date of initial service for each New Route.
 - (2) A request to participate in the New Entrant Incentive Program shall demonstrate that the carrier meets the requirements of the Program.

(3) If a Participating Airline's Agreement expires, or is terminated, for any reason, its right and entitlement to incentives under the Program will automatically terminate as of the date of expiration or termination without notice.

- D. Notices. In order to ensure ongoing compliance with the terms and conditions of the Program, the Participating Airline shall give the Department written notice of any change in its scheduled operations to or from the Airport no later than the earlier of (a) the date such schedule change is published in the Official Airline Guide or similar schedule publication media, or (b) sixty (60) days in advance of effective service change date.
- E. Duplication of Incentives. A Participating Airline may qualify to receive incentives under both the New Entrant and the New Route Programs; provided, however an air carrier that is participating in both the New Entrant and New Route Programs shall be entitled to receive only one set of the marketing incentives described in Section 3. A Participating Airline may not receive incentives under other or additional incentive programs the Department may adopt in the future while it is receiving incentives under this Program. If a Participating Airline qualifies for incentives under some other or additional incentive program the Department may adopt in the future, it must elect the program in which it wishes to participate. If the Participating Airline fails to make such election, it shall be deemed to have chosen the program in which it first participated.
- F. Subject to Applicable Law. The Program is subject to all applicable laws, statutes, rules, regulations (including, but not limited to, Federal Aviation Regulations set forth in Title 14 United States Code of Federal Regulations), and the provisions of any agreement between the City and the United States concerning the operation or maintenance of the Airport, required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, the expenditure of federal funds for the development of the Airport, or to impose or use passenger facilities charges under 49 U.S.C. § 40117. The Department may, without incurring any liability to Participating Airlines, amend or terminate the Program, including any payments or fee discounts under the Program, upon advice of its legal counsel, if necessary to comply with the requirements of applicable law, and agreements with the United States as a condition precedent to the granting of funds for the improvement of the Airport or to impose or use passenger facility charges under 49 USC §40117.
- G. Funding of Incentives. Fee waivers and marketing incentives under the Program are funded from Department non-airline revenue.

5. Default and Remedies.

- A. Default. Each of the following shall be a default by a Participating Airline and a material breach of the Program:

- (1) The Agreement of the Participating Airline expires or is terminated for any reason.
- (2) A New Entrant, other than Transoceanic Seasonal New Entrants, fails to satisfy the Minimum Departure Requirement for the applicable Destination Airport, and does not resume flight operations at the Airport within ten (10) days after receipt of written notice from the Department.
- (3) A Transoceanic Seasonal New Entrant fails to satisfy the operational requirements of paragraph 2.F(2) and does not cure the default within ten (10) days after receipt of written notice from the Department.
- (4) A Participating Airline:
 - (a) fails to timely initiate service on a New Route;
 - (b) ceases to operate a New Route for a period of fourteen (14) consecutive days or longer; or
 - (c) fails to operate a New Route as originally announced and schedules filed; incentives could be partially or totally revoked.
- (5) A Participating Airline fails to timely submit any report required by the Department or fails to keep, perform, or observe any other term or condition of the Program, and fails to cure such failure within ten (10) days after receipt of written notice from the Department specifying the failure.
- (6) A default under its Agreement.

B. Remedies of Department. In the event of a default by a Participating Airline, the Participating Airline's participation in the Program and all incentives under the Program will terminate. Termination of incentives arising out of a cessation of air service or failure to operate a New Route shall be effective as of the date the Participating Airline first ceased flight operations at the Airport, or first ceased to operate the New Route, as applicable. In addition, the Participating Airline may be required at the discretion of the Department to reimburse any incentives received under the Program.